UBS

UBS Financial Services Inc.
1200 Harbor Blvd., 10th Floor
Weehawken, NJ 07086

Legal

Craig E. Darvin
Tel. (201) 352-3796
Fax. (201) 352-7291
craig.darvin@ubs.com

www.ubs.com

November 6, 2007

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
regs.comments@federalreserve.gov

Re: Docket No. R-1286

Dear Ms. Johnson:

I am pleased to submit this letter on behalf of UBS Bank USA in response to the request for comments issued by the Board of Governors of the Federal Reserve System (the "Board") in connection with its comprehensive review of Regulation Z. UBS Bank USA is a Utah-chartered industrial bank with more than $23 billion in assets and a wholly-owned U.S. subsidiary of Switzerland's UBS AG, a leading global wealth management business, a global investment banking and securities firm and a key asset manager. UBS Bank USA appreciates the opportunity to comment on the proposed rule (the "Proposed Rule") to amend Regulation Z, 12 C.F.R. Part 226 (the "Regulation") and the official Staff commentary to the Regulation (the "Commentary") published in the Federal Register on June 14, 2007 by the Board. Our comments in this letter are limited to certain aspects of the Proposed Rule that may impact our securities-based loan account ("SBL Account").

Description of SBL Account

The SBL Account offered by UBS Bank USA is a line of credit that is collateralized by a securities account held at a broker-dealer affiliate of the bank ("Collateral Account").[1] The credit line has a maximum principal amount that can be outstanding ("Approved Amount"), which is established by UBS Bank USA on the basis of the market value, from time to time, of the stocks, bonds and other securities in the Collateral Account.

[1] The SBL Account is not secured by real property or by personal property used or expected to be used as the principal dwelling of the consumer.

A borrower may request an advance on the SBL Account ("Advance") by telephone call asking for proceeds of the Advance to be deposited to a designated deposit account, or to be sent by ACH or wire transfer. Borrowers also may request Advances by writing checks provided on the Account.

At the time of an Advance, the borrower may choose from fixed or variable interest rate options for the Advance as set forth in the loan agreement for the SBL Account ("Loan Agreement"). Advances on the SBL Account are due on demand; however, advances with a fixed interest rate also must be paid in full by a payment due date established on the basis of the fixed rate. The SBL Account has no stated maturity, and UBS Bank USA may at any time, in its discretion, terminate and cancel the credit line and demand repayment of all outstanding Advances and other amounts owing on the SBL Account.

UBS Bank USA requires that the initial Advance on the SBL Account must be at least $25,001. As a result, SBL Accounts obtained by individuals for consumer purposes are exempt from Regulation Z under 12 C.F.R. § 226.3(b) ("Large Loan Exemption"). After the initial Advance, subsequent Advances must be in an amount of not less than $2,500, although certain fixed rate options are available only for Advances of $100,000 or more.

Comments On Board's Proposed Rule

UBS Bank USA commends the Board on the extensive work it has done on the Proposed Rule. Regulation Z has not been updated for many years and UBS Bank USA believes that the Proposed Rule in many respects will improve the effectiveness of Regulation Z disclosures for consumers. However, we believe that four points need to be clarified in the Proposed Rule:

(1) a creditor should be able to verify the consumer's creditworthiness in connection with a request for an advance on an open end credit account;

(2) a creditor should be able to have a contractual right to terminate an open end account in its discretion;

(3) individual advances on a credit line with different interest rates or repayment terms should not be required to independently satisfy the replenishment requirement of the open end credit definition; and

(4) advances on a credit line, after an initial advance of more than $25,000, should be exempt under the Large Loan Exemption, even if the creditor separately underwrites each advance.

We provide an explanation of our thoughts on these four points in the following sections.

A. A Creditor Should Be Able to Verify Creditworthiness In Connection with a Request for an Advance on an Open End Credit Account. (Comment 2(a)(20)-5)

Regulation Z defines "open end credit" as consumer credit extended by a creditor under a plan in which: (i) the creditor reasonably contemplates repeated transactions, (ii) the creditor may impose a finance charge from time to time on outstanding unpaid balance, and (iii) the amount of credit that may be extended to the consumer must generally be made available to the consumer to the extent that any outstanding balance is repaid. 12 C.F.R. § 226.2(a)(20).

Under the Proposed Rule, Comment 2(a)(20) would interpret the third element of the definition of open end credit ("Replenishment Requirement") to allow creditors to "occasionally or routinely" verify credit information on the borrower, but also indicates that such verification cannot be done "as a condition of granting a consumer's request for a particular advance under the plan." UBS Bank USA respectfully submits that creditors should be able to verify creditworthiness of borrowers in connection with responding to requests for advances, as well as in connection with account review processes, as apparently contemplated by the Proposed Rule.

Section 103(i) of the Truth in Lending Act expressly provides that a credit plan does not cease to be open end credit merely because "credit information is verified from time to time." 15 U.S.C. § 1603(i). The statute does not impose any limitation on the frequency with which such verification is made, nor does it indicate that such verification can be made only as part of an account review, and not when a consumer requests an advance. Moreover, there are strong policy reasons not to restrict the timing of when such a verification can be conducted. The most important time to conduct a verification is when an advance is requested. The Board's Proposed Rule to limit verifications in connection with requests for advances is likely to have the result of requiring creditors to rely on dated verification information, or to incur unnecessary costs to conduct frequent account reviews to ensure information has been verified recently. It also is inconsistent with safe and sound banking practices that are commonly followed with respect to loan facilities of all types.

Further, UBS Bank USA believes that limiting a creditor's ability to verify the consumer's creditworthiness as part of a request for an advance on the credit line is not necessary to achieve the stated goal of the revisions to Comment 2(a)(20). The Board has indicated that this change is intended to distinguish applications for separate extensions of credit from subsequent advances on an open end credit plan. However, the concept of "verification" is, by itself, distinguishable from a de novo credit decision on an application for a new loan. Indeed, Comment 2(a)(20) recognizes this insofar as it contemplates a determination of whether the consumer continues to meet the lender's credit standards and provides that the consumer should have a reasonable expectation of obtaining additional credit as long as the consumer continues to meet those credit standards. An application for a new extension of credit contemplates a de novo credit determination, while a verification involves a determination of whether a borrower continues to meeting the lender's credit standards.

Additionally, UBS Bank USA believes that it is critical for Comment 2(a)(20)-5 in the Proposed Rule to expressly permit routine collateral valuation and verification procedures at any time, including as a condition of approving an advance. [2] Indeed, Regulation U, 12 C.F.R. Part 221, requires a bank, in connection with margin lending, to not advance funds in excess of a certain collateral value. Under the Proposed Rule, Comment 2(a)(20)-5 does not expressly distinguish between the verification of creditworthiness information about the borrower and information about collateral valuation. Even if the Board determines to not permit creditors on open end plans to verify creditworthiness at the time a request for an advance is made, verification of collateral requirements should be permitted. The continued value of required collateral is a standard condition to disbursement of funds pursuant to secured loan facilities and does not in any way suggest that requests for additional advances on the credit lines like the SBL Account should be treated as requests for additional closed end loans. Also, in the case of open end plans like the SBL Account, a borrower's credit limit is determined from time to time based on the market value of the collateral securing the account.

UBS Bank USA also requests that the Board clarify the "reasonable expectation" language in Comment 2(a)(20)-5, as it is continued from the existing Commentary in the Proposed Rule. Presently, this Comment states that "consumers should have a reasonable expectation of obtaining credit as long as they remain current and within any present credit limits. . . " We believe that the language should be revised to provide that "a consumer should have a reasonable expectation of obtaining credit within any preset credit limits as long as the consumer continues to meet the creditor's standards of creditworthiness, any collateral requirements and otherwise complies with the provisions of the loan agreement." Irrespective of whether a creditor may verify a borrower's creditworthiness or collateral position in connection with a request for an advance, the reference in the revised phrase to "the creditor's standards of creditworthiness and any applicable collateral requirements" is necessary to recognize that creditors can verify such matters as part of an account review and a consumer does not need to have a reasonable expectation of additional credit if they cease to meet those requirements. Moreover, reference to "provisions of the applicable loan agreement" should be included because a consumer should not expect to obtain additional advances if the consumer is in default in any provision of the loan agreement (it is not enough to merely be "current" in their payments), and otherwise does not comply with requirements for advances in the loan agreement (such as minimum advance requirements or the method for requesting advances).

B. A Creditor Should be Able to Have a Contractual Right to Terminate an Open End Account in Its Discretion. (Comment 2(a)(20)-5)

UBS Bank USA also requests that the Board confirm that Regulation Z, and revised Comment 2(a)(20)-5 in particular, do not prevent a creditor on an open end account from having a contractual right to terminate the account in its discretion. The language in

[2] Collateral is integral to securities-based lending products such as the SBL Account. See Federal Reserve Board Letter issued to David Teitelbaum dated February 2, 2004.

Comment 2(a)(20)-5 applies to reviewing requests for advances on an existing open end plan; it does not expressly apply to a contractual right to terminate a plan in the creditor's discretion. However, a unilateral right to terminate an open end account arguably might be inconsistent with a consumer's reasonable expectation to be able to repay and re-borrow on the account absent an adverse change in creditworthiness, as reflected in proposed Comment 2(a)(20)-5.

UBS Bank USA believes that a lender's unilateral right to terminate a credit line is entirely consistent with the definition of open end credit. Most open end credit plans (other than home equity lines of credit) do not have an expiration date and are "open ended" in the sense that both the consumer or the creditor can terminate the plan at any time. Safety and soundness considerations dictate that creditors continue to have this right on open end accounts.

The right to terminate an open end account in the creditor's discretion is needed for banks so that they are not required to maintain capital against the unused portion of a line of credit. Under the federal banking agencies' capital rules, unused balances of consumer credit lines are weighted in the 0% category as long as the creditor retains the unilateral right to terminate the credit line. See, e.g., 12 C.F.R. Part 208, appendix A, Section III.D.5. If creditors are not allowed to continue to have the contractual right to terminate consumer credit lines in their discretion, their capital costs (and the costs to consumers for the credit products) will increase. See, e.g., 12 C.F.R. Part 208, appendix A, Section III.D.2.b. (indicating that unused commitments are included in 50% category).

C. Individual Advances on a Credit Line With Different Interest Rates or Repayment Terms Should Not be Required to Independently Satisfy the Replenishment Requirement of the Open End Credit Definition. (Comment 2(a)(20)-2.)

Existing Comment 2(a)(20)-2 presently provides that a credit plan with multiple features satisfies the definition of open end credit if the plan as a whole meets the definition of open end credit. The Proposed Rule would delete this general statement, and revise Comment 2(a)(20)-2 to provide that each feature of a multiple feature account must satisfy the Replenishment Requirement. The Proposed Rule would not modify Comment 2(a)(20)-3 insofar as it would continue to provide that the repeat transaction requirement would be satisfied for a multi-feature plan if the plan as a whole reasonably contemplates repeat transactions (i.e. each feature is not required to satisfy this element of the definition of open end credit).

UBS Bank USA has two suggestions with respect to the proposed change to Comment 2(a)(20)-2. First, we suggest that any new rules regarding application of the Replenishment Requirement to multi-featured plans be moved to Comment 2(a)(20)-5 (or another Comment dealing specifically with the Replenishment Requirement). Comment 2(a)(20)-2 previously dealt with plans generally, and the application of all of the elements of the definition of open end credit to multi-featured plans. Including the new rules that address application of only the Replenishment Requirement to multi-featured plans in this

general Comment (titled "Existence of a Plan") may cause confusion regarding application of the other two requirements in the definition to multi-featured plans.

Second, the language proposed to be added to Comment 2(a)(20)-2 suggests that an open end credit plan has multiple features (which must independently satisfy the Replenishment Requirement) merely because advances may have different interest rates or repayment terms. In the SBL Account, consumers can choose from a variety of interest rate and repayment terms in connection with advances they choose. These options are not based on the purpose for which the borrower will use the advance or the collateral that will secure the advance. In this instance, it is not appropriate to require UBS Bank USA to "replenish" credit availability on each of the interest rate options and repayment terms on which a consumer may have borrowed. Rather it should be sufficient, for purposes of applying the Replenishment Requirement, that the consumer can re-borrow on the interest rates and repayment terms then offered by UBS Bank USA. Otherwise, the application of the Replenishment Requirement would have the (presumably unintended) effect of precluding UBS Bank USA from changing the interest rate and repayment terms it offers on its open end accounts.

D. Advances on a Credit Line, After an Initial Advance of More than $25,000, are Exempt Under the Large Loan Exemption Even if the Creditor Separately Underwrites Each Advance.

Comment 3(b)-2 presently provides that, pursuant to the Large Loan Exemption, Regulation Z does not apply to an open end credit plan if the initial extension of credit on the line exceeds $25,000. As noted above, under Comment 2(a)(20)-5 as proposed by the Board, subsequent advances on a credit line arguably will be treated as separate extensions of closed end credit if the creditor verifies the continued creditworthiness of a borrower (or applies de novo underwriting standards) in connection with a request for an advance. UBS Bank USA submits that the Large Loan Exemption should apply to advances on a credit line after an initial advance of more than $25,000, even if the creditor verifies the borrower's creditworthiness (or applies de novo underwriting standards).

The fundamental premise underlying the Large Loan Exemption is that extensions of credit in excess of $25,000 are made to sophisticated borrowers that do not require disclosures under Regulation Z. As evidenced by Comment 3(b)-2 as it exists today, that premise is applicable when the initial advance is more than $25,000. It applies equally to any subsequent advance on the open end plan, even if the borrower's request for such an advance is subject to verification (or de novo underwriting) by the creditor. Indeed, the borrower cannot be expected to be any less sophisticated with respect to such additional advances merely because of the creditor's underwriting practices.

Further, the fact that advances are subject to verification (or de novo underwriting) does not affect the conclusion that, as a practical matter, the advances are part of a single credit plan. For example, on an SBL Account, all such advances are evidenced by a single promissory note, subject to a single loan agreement, secured by the same collateral, and repaid on an account basis, irrespective of whether requests for additional advances are

subject to verification (or de novo underwriting). Thus, UBS Bank USA believes strongly that Comment 3(b)-2 should be modified to expressly provide that application of the Large Loan Exemption to credit lines on which there is an initial advance of more than $25,000 is not affected by whether the borrower's requests for subsequent advances are subject to verification (or de novo underwriting).

* * *

UBS Bank USA appreciates the opportunity to comment on the Proposed Rule and would be pleased to discuss any of the points raised herein in greater detail. If you have any questions, please contact me at (201) 352-3796 or by email at craig.darvin@ubs.com.

Sincerely,

Craig E. Darvin